

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA**

**MINUTE ORDER**

DATE: 09/22/2015

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM: Leah Tommela

CASE NO: **56-2014-00461060-CU-NP-VTA**

CASE TITLE: **P.Q.L Inc vs Revolution Lighting Technologies Inc**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Non-PI/PD/WD tort - Other

---

**EVENT TYPE:** Motion For Order (CLM) designating information as Trade secrets on behalf of plt

---

**EVENT TYPE:** Motion to Appoint Discovery Referee

MOVING PARTY: P.Q.L Inc

CAUSAL DOCUMENT/DATE FILED: Motion - Other for Appointment of Discovery Referee Memo of Points and Authorities in support thereof Declaration of T Randolph Catanese etc, 08/14/2015

---

**EVENT TYPE:** Motion - Other (CLM) for an Order Designating Information as Trade Secrets

MOVING PARTY: P.Q.L Inc

CAUSAL DOCUMENT/DATE FILED: Motion - Other for and Order Designating Information as Trade Secrets Supporting memorandum of Points and Authorities and Declaration of T Randolph Catanese, 08/25/2015

---

**APPEARANCES**

Thomas P Carter, counsel, present for Defendant,Cross - Complainant(s) telephonically.

Nicholas Kanter, counsel, present for Defendant(s).

Deborah Sirias, specially appearing for counsel Thomas S Kidde, present for Defendant,Cross - Complainant(s).

Gene Scott Fein, Defendant is present.

T Randolph Catanese, counsel, present for Cross - Defendant,Plaintiff(s).

---

At 9:04 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Plaintiff does submit on the Court's tentative ruling.

Matter submitted to the Court with argument.

The parties stipulate that the financial documents 112, 115-119, 125-128, 142-159, 163-174, 185-190, and 193-203 are "confidential."

The Court finds/orders:

Parties are to incorporate stipulation into the formal order to be submitted to the court.

Plaintiff is to give Defendants a copy of declarations with attached exhibits that were submitted to the Court and filed under seal.

The Court's tentative is adopted as the Court's ruling.

**Motion Designating Information as Trade Secrets on Behalf of Plaintiff:**

Defendants' unopposed request for judicial notice of Plaintiff's 2/26/15 *ex parte* application for a Temporary Restraining Order is granted. Defendants' Application to File Records Under Seal is granted. The Reply evidence submitted by Plaintiffs is not considered.

The Motion is denied because Plaintiff has not met its burden of establishing the applicability of its "trade secret" designations. In court the parties stipulate that the financial documents 112, 115-119, 125-128, 142-159, 163-174, 185-190, and 193-203, are "confidential."

**Discussion:**

The Court will not consider the Reply declarations of Sreden or Catanese because Ds have not had the chance to respond. "The general rule of motion practice [...] is that new evidence is not permitted with reply papers." *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38. As for the merits of the Motion, the language of the Protective Order entered by the Court on 5/13/15, section 2 allows the parties to designate "confidential" or "trade secret" information, after a "good faith" determination that the information is confidential or meets the definition of "trade secret" in Civil Code §3426.1(d). Section 2(B), specifically referencing trade secret information, states that "Blanket designation of documents of information [...] en mass without regard to the specific contents of each document or piece of information, is prohibited." Pursuant to Section 9:

Any party may, at any time, challenge the designation of any material as [...] "TRADE SECRET" by notifying the designating party in writing. To preserve its [...] "TRADE SECRET" designation, the designating party within twenty (20) business days after receipt of any such notice, must apply to the Court for a ruling that the material objected to shall be treated as Designated Information and notice of such application shall be provided to all other parties. The designating party shall have the burden of establishing the applicability of its [...] TRADE SECRET designation.

On 7/27/15, P produced 205 documents in response to Revolution Lighting Technologies, Inc's document production and designated **all of them** as a "trade secret." As noted in Section 2, blanket designation is inappropriate. P did not attempt to justify designation of the documents with regard to the

contents of the specific documents at the time of designation. The Motion makes some effort but it does not refer to every document objected to. In fact, the declarations group all the documents together and conclusory state that all of the challenged documents contain information obtained by P's specialized knowledge gained over years. That is not enough specificity to meet its burden of proof.

Taking into consideration the documents that Plaintiff is withdrawing, the documents which Defendants are actually contesting the Trade Secret designation are the following: 11-12, 19-22, 28-34, 40-42, 48-49, 52-53, 56-64, 83-85, 104, 109-119, 124-129, 138-181, 184-190, 193-203. The following were not addressed by P in the Motion or in the Reply: 33-34, 40-42, 49, 56-64, 83-85, 109-111, 180-181. Accordingly, P's burden of showing that the applicability of the designation has not been met as to those documents and the Motion is denied as to each of them.

A "trade secret" has four elements under the Uniform Trade Secrets Act (UTSA, CC §3426 et seq.):

- - it must be comprised of "information";
- - it must not be "generally known";
- - it must derive "independent economic value" from the fact that it is a secret; and
- - it must be the subject of "reasonable" efforts to "maintain its secrecy." [Civ.C. § 3426.1(d)]

As stated in *Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.* (2014) 226 Cal.App.4th 26, 62:

To be protectable as a trade secret, the information at issue must "[d]erive[ ] independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use." (§ 3426.1, subd. (d)(1).) In other words, the information alleged to be a trade secret "is valuable because it is unknown to others." (*DVD Copy Control Assn. v. Bunner* (2004) 116 Cal.App.4th 241, 251, 10 Cal.Rptr.3d 185.) Thus, the focus of the inquiry regarding the independent economic value element is "on whether the information is generally known to or readily ascertainable by business competitors or others to whom the information would have some economic value. [Citations.] Information that is readily ascertainable by a business competitor derives no independent value from not being generally known. [Citation.]"

The Court will address each of the remaining contested bates-stamped documents:

**11-12, & 19** – Per *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1454-55, the email between Delgado and Tony Broude (a representative of third-party Centercal Properties, LLC) and the attachments, cannot be a trade secret because the information was disclosed to a customer not bound by a secrecy agreement (at least there is no information before the Court). Any information disclosed to customers or potential customers, who were/are not bound by any secrecy agreement, cannot be treated as trade secret. There cannot be said to be an effort to maintain the price quotes secrecy when they are emailed to customers under no obligation to keep them secret. Also, whether specialized pricing or unique price quotes were provided in order to create the attachments does not threaten the secrecy of the CRM program. P has not met its burden.

**20** – Same *Whyte* analysis regarding the emailed drafted by Warnes for Delgado to send to Jori Gohsman at Batteries Plus, while Warnes and Delgado worked at Tri-State LED. In addition, there is no information in the email regarding PQL. P has not met its burden.

**21-22** – The product sheet, like the one publically available on P's website, *appears* intended for public use. Furthermore, there is no evidence that employees were told that the product sheet was confidential or secret. P has not met its burden.

**28-30** – P has failed to show that the emails with Essex Property Trust contain any trade secret information. P failed in its burden.

**31-32** – The emails from Warnes while employed at Tri-State contain no information related to P.

**48** – *Whyte* analysis applies to the price quote from P to John Menicucci of Morrow-Meadows Corporation. There is no evidence that Menicucci was under any secrecy obligation.

**52-53** - *Whyte* analysis applies to the email to Rosewood Hotels regarding an energy audit. No evidence Rosewood was under any obligation to protect or that there was any independent value.

**54-55** – Although P addresses them in the Motion and Reply, Ds have not challenged the trade secret designation.

**104-105** – There is simply no evidence that the Organizational Chart contains independent economic value from not being publically known. The information contains the names and titles of P's employees. There is no evidence that the employees or their supervisors' names are secret. Even considering the Reply declaration, Sreden does not claim that there were any efforts made to maintain the Organizational Chart's secrecy. There is nothing unique, as far as I can tell, about the structure of PQL. A "sales team structure and oversight by management" cannot said to be unique or secret. The burden was not met.

**113-115, 129, 138-141, 160-162, 175, 178-179, & 184.** Nothing in these documents meets the definition of trade secret. Where is the economic value of the emails independent of the attachments? P has not met its burden.

**176-177** were not discussed by Ds in their Joint Opposition. There is no evidence of the documents' independent value to a competitor.

**112, 115-119, 125-128, 142-159, 163-174, 185-190, and 193-203** – P has not shown how these documents are a trade secret as opposed to confidential information. The non-disclosure agreement entered into between RVLT and P (provided only in the Reply), only states that certain information is "proprietary or confidential."

As to P's financial information, Ds note that they previously proposed that all of these documents be designated as "confidential" because P's financial information is not valuable to others, but only to itself. There is no advantage to competitors knowing how much P spent on utilities, telephone expenses, or rental car expenses. The information should at least be designated confidential. The Court invites the parties to stipulate to that fact.

### **Motion for Order Designating Customer List as Trade Secrets:**

The motion is denied. Plaintiff has not met its burden.

### **Discussion:**

Per the stipulated Protective Order, it is the burden of P to establish that the customer list is a trade-secret. *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1521-22:

With respect to the general availability of customer information, courts are reluctant to protect customer lists to the extent they embody information which is "readily ascertainable" through public sources, such as business directories. (*American Paper & Packaging Products, Inc. v. Kirgan* (1986) 183 Cal.App.3d 1318, 1326, 228 Cal.Rptr. 713.) On the other hand, where the employer has expended time and effort identifying customers with particular needs or characteristics, courts will prohibit former employees from using this information to capture a share of the market. Such lists are to be distinguished from mere identities and locations of customers where anyone could easily identify the entities as potential customers. (See *Klamath-Orleans Lumber, Inc. v. Miller, supra*, 87 Cal.App.3d at p. 461, 151 Cal.Rptr. 118; *ABBA Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 19-20, 286 Cal.Rptr. 518.) As a general principle, the more difficult information is to obtain, and the more time and resources expended by an employer in gathering it, the more likely a court will find such information constitutes a trade secret. (*Courtesy Temporary Service, Inc. v. Camacho* (1990) 222 Cal.App.3d 1278, 1287, 272 Cal.Rptr. 352.)

*Was there enough effort put into the list to qualify?*

The Customer List at issue is simply a long list (&#8776;300) names of businesses and nothing else; e.g., "City of Santa Clarita, City Place, Classic Designs, Club at Black Rock." There is no contact information, no person in charge, no preferences indicated, no evidence that the list is actual customers, and no indication of how the list was compiled. The source of the list is not disclosed. The Sreden declaration does not show what efforts were made to compile the list, except for very general statements that he has many years of specialized knowledge. As noted in *American Paper* at 1326, not all customer lists are entitled to protection. "While the information sought to be protected here, that is lists of customers who operate manufacturing concerns and who need shipping supplies to ship their products to market, may not be generally known to the public, they certainly would be known or readily ascertainable to other persons in the shipping business. The compilation process in this case is neither sophisticated nor difficult nor particularly time consuming." *Id.* Per *Courtesy Temporary Service, Inc. v. Camacho* (1990) 222 Cal.App.3d 1278, 1287-88 ("The compilation by Courtesy of its list of customers was the result of lengthy and expensive efforts, including advertising, promotional campaigns, canvassing, and client entertainment." "It is the list of persons who actually purchase Courtesy's services that constitute confidential information.")

Here, Leduff says that pages 1-10 include prospective customers who never actually did business with P. P does not contest that. The Sreden declaration refers to a list of P's "Top 100" customers, while 1-10 include over 300 names. There is insufficient evidence of the effort behind the compilation of business names.

Because the Court does not believe P has met its burden of showing the required effort in compiling the list, it is necessary to reach whether there were sufficient efforts to maintain the list's secrecy.

### **Motion to Appoint Discovery Referee:**

The Motion is denied, without prejudice, because the appointment of a referee has not been shown to be

necessary at this point in time. Plaintiffs have not shown that exceptional circumstances exist in this case, at this point, which would justify the appointment of a discovery referee.

**Discussion:**

Is a referee "necessary"?

CCP §639(a):

"When the parties do not consent, the court may...of its own motion, appoint a referee... (5) When the court in any pending action determines it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon."

Taggares v. Superior Court (1998) 62 Cal.App.4th 94, at 104-106, stated:

[T]here is no suggestion the Legislature intended these powers to be used over the parties' objection in routine, pro forma, uncomplicated matters simply for expediency or a distaste for discovery resolution. Indeed, the statute gives the court this discretion when such a reference is *necessary*. (emphasis original)

[...]

Unless both parties have agreed to a reference, the court should not make blanket orders directing *all* discovery motions to a discovery referee except in the unusual case where a majority of factors favoring reference are present. These include: (1) there are multiple issues to be resolved; (2) there are multiple motions to be heard simultaneously; (3) the present motion is only one in a continuum of many; (4) the number of documents to be reviewed (especially in issues based on assertions of privilege) make the inquiry inordinately time-consuming.

In making its decision, the trial courts need consider the statutory scheme is designed only to permit reference over the parties' objections where that procedure is *necessary*, not merely convenient. (§ 639, subd. (e).) Where one or more of the above factors unduly impact the court's time and/or limited resources, the court is clearly within its discretion to make an appropriate reference.

The issues complained of here do not, for the most part, exist yet. While this is clearly a multi-party, multi-cause of action lawsuit, this motion is premature. There are not multiple issues to be resolved (yet). There are not multiple discovery issues pending, or even a single motion to compel (yet).

There are no discovery motions filed or pending. While it is understandable that P is concerned about the potential for discovery issues in the future, that does not justify appointing a referee at this point. The parties face routine discovery matters which should be handled by the parties. There is not sufficient reason to require the parties to pay a referee. A referee would serve no necessary function under the circumstances of this case at this point in time.

Formal order to be submitted by Mr. Catanese.